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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of S.R., Department of
Human Services

Discrimination Appeal

CSC Docket No. 2014-3019

ISSUED: APR - 6 2015 (LDH)

S.R., a Social Worker Supervisor ³¹ at Ancora Psychiatric Hospital, Department of Human Services, appeals the decision of the Office of Equal Employment Opportunity (EEO), which found that the investigation had only substantiated one of the appellant's allegations that she had been subject to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, an African-American female, filed a discrimination complaint with EEO alleging that Associate Hospital Administrator 2, S.L., a Caucasian female, had discriminated against her based on her gender and race and demeaned her as a form of retaliation. Specifically, she alleged that S.L., referred to employees as "boys and girls" in her greetings, identified the appellant by her maiden name, and made the remark "Someone should cut his dick off." In addition, she alleged that the appointing authority filed disciplinary charges against her as a form of harassment and retaliation due to her race. In response to this complaint, the EEO conducted an investigation which included seven interviews and a review of relevant documents. The EEO substantiated that one of the appellant's allegations, that S.L. made the remark "Someone should cut his dick off," violated the State Policy. The EEO found that the remaining allegations by the appellant were unfounded.

¹ The appellant resigned from her position on June 23, 2014.

On appeal to the Civil Service Commission (Commission), the appellant argues that there was not a full and thorough investigation related to her claims of retaliation and discrimination. She contends that the investigation did not interview the entire treatment team members that were present during the various meetings. In addition, the appellant argues that the investigation should have interviewed other Social Service staff regarding the racial and retaliation complaint. However, the appellant does not provide names or an indication of what statements would be proffered by interviewing other employees. The appellant argues that S.L. filed a complaint against the appellant alleging racial discrimination as a form of retaliation. With regard to the appointing authority, the appellant contends that since May 2009 she has been harassed in the form of failed performance evaluations; denied promotional opportunities; received unwarranted disciplinary actions; and was given a "notice to terminate" by management.

In response, the EEO initially notes that it stands by its letter of determination and incorporates by reference the explanations that support its conclusions. With regard to the allegations against S.L., the EEO substantiated the allegation that S.L. made the comment "Someone should cut his dick off!" Though the appellant reported three witnesses overheard the comment, only one witness corroborated the allegation. The EEO noted that S.L. had referred to the appellant by her maiden name in an e-mail, but that when corrected, S.L. stopped using the appellant's maiden name. The EEO noted that with regard to S.L. using "Hey, boys and girls" as a form of greeting before meetings, two witnesses denied that the greeting was used, but one witness stated that S.L. may have stated "Boys and girls, let's meet." Moreover, S.L. admitted that she may have addressed staff in meetings by stating, "Hey kids, how's it going," or "How are the kids today?" The EEO concluded that this salutation was not in violation of the State Policy but it was a violation of the appointing authority's Customer Service Policy which states that employees are expected to treat each other with dignity and respect. However, the EEO found that the allegation that S.L. discriminated against the appellant because of her race was unsubstantiated as there was no evidence that the appellant was treated any differently because of her race. Furthermore, the investigation did not substantiate that S.L. belittles the appellant in the presence of her colleagues as a form of retaliation as there was no previous discrimination complaint or evidence that S.L. knew of the instant complaint.

With regard to the appellant's allegation that the appointing authority had filed disciplinary charges against the appellant as a form of harassment and retaliation due to her race, the EEO failed to substantiate the allegation. Moreover, the EEO stated that management has the right to pursue disciplinary charges against their employees and that the appellant would be provided with a hearing on the discipline. Thus, the EEO concluded that the State Policy was not violated.

CONCLUSION

It is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories. See *N.J.A.C. 4A:7-3.1(a)*3. The protected categories include race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. See *N.J.A.C. 4A:7-3.1(a)*. Moreover, the appellant shall have the burden of proof in all discrimination appeals. See *N.J.A.C. 4A:7-3.2(m)*3.

The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted and that the relevant parties in this matter were interviewed. The EEO appropriately interviewed several witnesses in investigating the appellant's complaint, and properly concluded that S.L. did not violate the State Policy based on the appellant's race or gender. Moreover, the appellant submits no evidence to support her allegations that she was treated differently because of her race or gender. S.L.'s one time use of the appellant's maiden name and S.L.'s use of "kids" may be improper but they do not violate the State Policy because they were not derogatory, demeaning, nor have a negative connotation in the context in which they were uttered. See *In the Matter of Susan Guerrini* (CSC, decided October 17, 2012) (Use of the word "young" not a *de facto* violation of the State Policy, unless other supporting factors substantiating a violation are present). Contrarily, S.L.'s comment that "Someone should cut his dick off" is a clear violation of the State Policy, as found by the EEO.

Though S.L. filed a letter of complaint against the appellant for discrimination, there is no evidence that S.L. knew of the instant complaint to support a retaliation allegation. In addition, the appellant's reference to a discrimination complaint filed by another individual in a separate matter is not relevant to determining whether the investigation of the appellant's particular matter was adequate.

The appellant also asserts that the appointing authority has subjected her to harassment and retaliation in the form of denied promotional opportunities, unwarranted disciplinary actions and failed performance evaluations and other such adverse actions. The appellant contends that she has reported her concerns to other hospital administrators to no avail. The EEO concluded that the appointing authority had not filed disciplinary charges against the appellant as a form of harassment and retaliation due to her race. The EEO properly concluded that the appointing authority did not violate the State Policy. The appellant has submitted no evidence in support of her assertions that the appointing authority harassed or

discriminated against her because of her race or gender. Moreover, the appointing authority has the right to pursue disciplinary charges against their employees. In addition, the Commission notes that any arguments concerning the appropriateness of the discipline may be raised in the disciplinary appeal process. *See In the Matter of Ann Doherty* (MSB, decided May 5, 2006) (Review of allegation of false comments on appellant's PES declined in the context of a discrimination appeal since another appeal mechanism was available to challenge performance standards or final PES ratings). *See N.J.A.C. 4A:6-5.3(b)*.

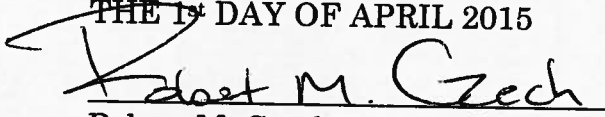
Finally, since the allegations of harassment and retaliation in the form of denied promotional opportunities and failed performance evaluations were not brought up in the initial investigation, it will not be addressed here on appeal. The appellant may file a new discrimination complaint against the appointing authority if she believes that the State Policy was violated by the denial of promotional opportunities and failed performance evaluations. Accordingly, the investigation was thorough and impartial, and no basis exists to disturb the EEO's determination.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1st DAY OF APRIL 2015


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Attachment

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